

18 February 1948

UNITED STATES )

v. )

Case No. 000-50-5-21

Josef KATTNER, et al. )

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, during the period 19 August - 9 September 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Josef KATTNER, Olf BRANDT, Josef CZUKLAK, Otto Friedr. KLEINGUENTHER, Christian WOHLER, Emil GERBIG, Johann LOTHALLER, Stefan MALLSCHITS, German nationals or persons acting with German nationals, acting in pursuance of a common design to subject the persons hereinafter described to killings, beatings, tortures, starvation, abuses, and indignities, did, at or in the vicinity of the Mauthausen Concentration Camp, at Castle Hartheim, and at or in the vicinity of the Mauthausen Subcamps, including but not limited to Ebensee, Gros-Raming, Gunskirchen, Gusen, Hinterbrühl, Lambach, Linz, Loiblpass, Melk, Schwechat, St. Georgen, St. Lambrecht, St. Valentin, Steyr, Vienna, Wiener-Neudorf, all in Austria, at various and sundry times between January 1, 1942, and May 5, 1945, wrongfully encourage, aid, abet, and participate in the subjection of Poles, Frenchmen, Greeks, Yugoslavs, Citizens of the Soviet Union, Norwegians, Danes, Belgians, Citizens of the Netherlands, Citizens of the Grand Duchy of Luxembourg, Turks, British Subjects, stateless persons, Czechs, Chinese, Citizens of the United States of America, and other non-German nationals who were then and there in the custody of the then German Reich and members of the armed forces of nations then at war with the then German Reich who were then and there surrendered and unarmed prisoners of war in the custody of the then German Reich, to killings, beatings, tortures, starvation, abuses and indignities, the exact names and numbers of such persons being unknown, but aggregating thousands.

(The correct Christian name of accused KLEINGUENTHER is Otto Friedrich (R 7)).

III. SUMMARY OF EVIDENCE: All convicted accused were members of the Waffen SS and had long and active service in the Mauthausen Concentration

By authority of JAG to



Camp and/or its subcamps, ranging from 1940 to 1945. The convicted accused participated in various acts of inhuman treatment toward the inmates, which consisted of beatings, tortures and killings by injections and shootings. The victims were Poles, Russians, Czechs and Austrians. Prosecution's Exhibit P-Ex 2 (R 17) is a certified copy of the charges, particulars, findings and sentences in the parent Mauthausen Concentration Camp Case (United States v. Altfeldisch, et al., 000-50-5, opinion DJAVC, February 1947, hereinafter referred to as the "Parent Case"; see Section V, post).

For brevity, Mauthausen Concentration Camp will be referred to as "Mauthausen", and each of the subcamps named in the particulars will be referred to simply by name, i.e., "Ebensee", "Gros-Raming", etc. Each of the incidents hereinafter mentioned is understood to have occurred at Mauthausen, or its respective subcamps, in Austria, unless otherwise stated.

IV. EVIDENCE AND RECOMMENDATIONS:

1. Josef KATZER

This accused was acquitted (R 596).

2. OLF BRANDT

Nationality:	German
Age:	54
Civilian Status:	Dentist
Party Status:	NSDAP
Military Status:	Waffen SS Technical Sergeant
Plea:	NG
Findings:	G
Sentence:	3 years, commencing 8 May 1945

Evidence for Prosecution: The accused was a member of the Waffen SS from 1939 to 1945; was in Flossenburg Concentration Camp from 1939 to 1940; was in Mauthausen from 1940 to May 1945; and had the rank of sergeant (R 18, 220; P-Exs 3A, 11, 11A). Kuehnreich identified the accused (R 80) and testified that he was furnished by the accused with a report on gold extracted from the teeth of dead inmates (R 81).



Kanduth identified the accused (R 151) and testified that he worked in the crematory and saw the accused pull and remove gold from the teeth of dead bodies in the crematory (R 152, 153). In 1945 witness saw the accused beat an inmate who fell to the ground and was bleeding (R 82, 83). Wahsner identified the accused (R 93) and testified that in 1944 he saw the accused beat a Polish inmate (R 94), and that he also beat a Czech inmate so severely the inmate did not show up for several days (R 95, 96). The accused was a brutal person (R 97).

In his extrajudicial sworn statement the accused stated that he came to Mauthausen in March 1940 and remained there in the Dental Section until the end of the war; that he received gold from the crematory which had been taken from the dead (R 220; P-Exs 11, 11A).

Evidence for Defense: Metzler identified the accused (R 427) and testified that he knew the accused in Mauthausen from 1940 until the end of the war and that the accused worked in the Dental Department; that he did not see or did not know of the accused mistreating anyone (R 427). The witness testified that he knew of an order from Berlin that gold fillings had to be removed from the teeth of dead inmates (R 428).

The accused testified that an order came from Berlin to remove gold fillings from dead bodies in the crematory but that he took no part in the removal and only cleaned the gold after it was removed (R 482); that he never did anything to any inmate that could be called mistreatment (R 481); that he went to the crematory a few times to collect gold that had been removed (R 483); that he made repeated applications to be transferred (R 489); that he was born in Stanton, Virginia; and that he joined the Allgemeine SS in June 1933 (R 483). He testified further that he never took out papers for German citizenship but was a soldier in World War I and was a German citizen, and that his parents were first German, then American, then German citizens (R 580).

Sufficiency of Evidence: It is clear that the accused had forfeited American citizenship, as discussed in Section V, post. The Court might well have concluded from the evidence that the accused participated in



the execution of the common design alleged.

The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: A Petition for Review was filed by Captain Frank E. Morse, defense counsel, 18 September 1947. A Petition for Clemency was filed by Captain Frank E. Morse, defense counsel, 15 January 1948,

Recommendation: That the findings and sentence be approved.

3. Josef CZURIAK

This accused was not served or tried (R 1).

4. Otto Friedrich KLEINGUENTHER

Nationality:	German
Age:	51
Civilian Status:	Metal Worker
Party Status:	NSDAP
Military Status:	Waffen SS Sergeant
Plea:	NG
Findings:	G
Sentence:	Death by hanging

Evidence for Prosecution: The accused stated in his extrajudicial sworn statement that he joined the Allgemeine SS and Nazi Party in 1932 and became a member of the Waffen SS in 1940; that he came to Mauthausen in June 1940 and remained there until June 1943, when he was sent to Leiblpass and was a medic in both places; that in 1942 an order came from Berlin that all inmates who could not be saved were to be given injections; that gasoline was used for this purpose because it had the quickest reaction; and that he was present in several cases when injections were given and he gave a narcotic when the doctor gave the injection (R 224; P-Exs 13, 13A).

In another extrajudicial sworn statement the accused stated that he was present when the doctor would give injections and had given a narcotic, and he remembered some 100 cases. The injection was made in the heart and before the needle was removed, the victim would be dead

(R 224; P-Exs 14, 14A).



In a third extrajudicial sworn statement the accused stated that the deathly sick were examined by three or four prison doctors with regard to their condition and that they were then presented to the SS doctor. When there was a group together, they were carried into the operation theater where the mercy killings were carried out (R 226; P-Exs 15, 15A).

Kanduth, a former inmate (R 152), identified the accused (R 154) and testified that in the fall of 1942 the accused gave an injection to a wounded inmate causing his death instantly and the body was cremated (R 154-156); that in the spring of 1943 the accused was seen in the crematory where inmates were injected; and that the accused administered injections in the crematory at the rate of 30 or 40 inmates every two to four weeks (R 158). The witness further testified that he saw the accused enter a room with a bottle and syringe in his hand and later saw 30 or 40 dead bodies in the room, each bearing evidence of the injection in the area of the heart. Witness also testified that he saw the accused giving the injections; helped remove the bodies to the refrigeration room (R 159); and that the bodies that were injected by the accused and placed in the refrigeration room were later cremated (R 160).

Armengal-Verge, a former inmate, identified the accused (R 188) and testified that between 1942 and 1943 a number of Hungarian Jews were brought to Mauthausen and put in the same barracks as the dispensary; that some 60 or 70 of them received death injections; that he had charge of the instruments in the dispensary, and during the time these Hungarian Jews were being injected, the accused called for instruments used in the injections; and that later the accused returned the instruments and they had blood on them and an odor of benzine (R 189, 190, 191). Von Posern, who has since been tried and convicted as a war criminal, (Case No. 000-50-5-46, United States v. Hans Von Posern), testified that in 1942 he saw the accused in the treatment room of Block B 19 making an injection in the heart of an inmate and in about three minutes the inmate was finished and was carried out (R 211, 212).

In his extrajudicial sworn statement, Ernst Martin stated that he came



to Mauthausen in August 1941 and remained there until the end of the war; that he worked in the hospital and kept the death book; that he knew the accused and saw him almost daily; that he saw the accused in the operations room with the injection syringe in his hand; that the ill who were to receive injections were often selected by the accused; that the victims were Austrians, Germans, Czechs, Poles and Russians; that the only ones who gave injections were the SS post doctor and the accused; that the accused would give injections three to four times a month; and that the accused would get the key for the gas chamber and would get the gas from the pharmacy (R 237; P-Exs 22, 22A).

Stockinger, a former inmate, identified the accused (R 247, 248), and testified that from May 1942 to September 1943 he was in the pharmacy at Mauthausen and came in contact with the accused quite frequently (R 249); and that he knew the accused took part in the killing of inmates by injections (R 250). The witness, upon three different occasions, saw the accused inject as many as 10 inmates at a time (R 251). This witness further testified that whenever there were groups of 300 or 400 especially under-nourished inmates to be disposed of, the accused injected them in groups of 60 or 70 and this would extend for three or four days. The victims were Poles, Austrians and Germans (R 252). The witness also testified that he actually witnessed at least 40 injections given by the accused (R 263).

Evidence for Defense: Metzler, a former First Sergeant at Mauthausen (R 426), testified that he never saw the accused give injections at Mauthausen; that accused endeavored to get transferred; and, that he left Mauthausen in 1943 (R 542).

The accused testified that he was drafted into military service in June 1940 (R 544); that he served at Mauthausen from June 1940 to June 1943 when he was transferred to Loiblpass, from where he was transferred to Berlin in June 1944 (R 545); that he never beat inmates (R 546); that he never gave injections to bring on death; that the only thing he did was to fill the syringe and give it to the doctor; that he was called on



several times to give the anaesthesia (R 547); and that before the inmate was given an injection he was first examined by the inmate doctor, then by the garrison doctor (R 550). He further testified that he never made selections for injections on his own accord (R 551); that he never bragged about killing 300 by injections; that he might have said on a few occasions, "Ten men have been injected", but he never said he had injected them (R 554); that he did supervise injections several times (R 556). He further testified that it was customary to give the patient an anaesthetic before the injection so he would not know what was going to happen to him. The patient was told that some blood was going to be taken or some such thing, and the anaesthetic was given to avoid the last brief struggle (R 563).

Sufficiency of Evidence: It is clear from the evidence that the accused personally killed many inmates or that he actively participated in such killings to such an extent as to be fully responsible for the deaths. The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: A Petition for Review was filed by Captain Frank E. Morse, 18 September 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

5. Christian WOHLRAB

Nationality:	German
Age:	28
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Sergeant, Waffen SS
Plea:	NG
Findings:	G
Sentence:	Death by hanging

Evidence for Prosecution: The accused joined the Waffen SS in January 1940, was sent to Mauthausen in 1943, and worked in the following subcamps: Gusen, Eisenberg, Schlier, Gros-Raming, Linz III and Melk, as a medic. In



December 1943 he came to subcamp Schlier and in 1944 was sent to subcamp Gros-Raming (R 221; F-Exs 12, 12A).

Schmehling, a former inmate, identified the accused (R 117) and testified that in March 1944 he heard the Camp Commander say to the accused, "Wohlrab, I only have healthy ones or dead ones, the men who I have in the hospital now will report for work tomorrow or they will be dead. If you don't know how to accomplish that, what on earth do you have injections for then I show it to you". The witness saw on the following day in a shack near the dispensary coffins containing dead bodies; the nationalities were Russians, Greeks, Poles, Yugoslavs (R 118). The dispensary had been emptied. The accused was the ranking medical man in camp at the time (R 119). In February or March 1944 the witness visited a friend in the dispensary and while there, saw the accused give an injection to a foreign inmate and a short time later the doctor said the man was "finished" (R 120). In 1944 a young Polish inmate was called to the orderly room where the Camp Commander was present together with the so-called liquidation team with its leader, WOHLRAB. In the presence of this witness the Camp Commander said to the accused, "This man will no longer be talking tonight" (R 121). The young Pole was taken to the washroom by the accused and three others and was brought out of the washroom dead, and one of the three with the accused made the remark, "Now, if one more of you is going to be insubordinate, he will get the same fate like this man. We drowned him like a cat" (R 122).

Kaufmann identified the accused (R 135) and testified that he saw him give benzine injections to three different inmates and they were dead after the injections were given (R 139, 140, 142).

Oppersingg identified the accused (R 166) and testified that on 20 May 1942, Hitler's birthday, he saw the accused in a room where 100 inmates were killed by injections in the heart; the accused was assisting the doctor who gave the injections (R 170 - 172). In spring 1942 the witness saw the accused kill a Polish inmate by an injection in the heart (R 172, 173). The accused often slapped and kicked away inmates who asked for bandages for injuries (R 174).



In an extrajudicial sworn statement Martin stated that the accused would talk to him about the injections he had given inmates; that he saw the accused in the office where he put on a white coat before giving injections; and that the victims of his injections were Poles, Czechs, French and Russians (R 237; P-Ex 28A). Verge testified that the accused was transferred from the dispensary because of his brutality toward the sick inmates; that when sick inmates would report for sick call, the accused would beat them and throw them out of the dispensary; and that he would hit inmates with his hands and a rubber hose (R 194). The witness further testified that he was told by a male nurse that the accused was brutal to inmates and that the accused had given death injections in the prisoners' hospital (R 195). Kaufmann testified that in the spring of 1942 at sick call the accused would appear with a rubber hose and would beat the sick inmates (R 137).

Evidence for Defense: Stretzwolf, a German inmate (R 412), identified the accused (R 429), and testified he was treated decently and quietly by the accused and that he never heard of the accused mistreating inmates (R 430). Metzler, an SS, identified the accused (R 431), and testified that nothing derogatory was known to him about the accused and he never heard that the accused injected inmates (R 433-434). Schoepperle, Camp Commander, subcamp Schlier, identified the accused and testified that the accused always performed his work to his best conscience and knowledge (R 435, 436); that he knew the accused at subcamp Schlier while the accused was there; that no injections to kill people were given (R 436); that he did not know of any person being given injections by the accused; and that no Polish inmate was killed in the washroom by being drowned (R 438). Tansmier, a former inmate, knew the accused at Mauthausen and never heard of him killing anyone by injections or beatings (R 450). Dr. Geiger, who was sentenced to 20 years imprisonment in a prior case (United States v. Geiger, et al., March 1948), testified that he was camp physician at subcamp Schlier and the accused was one of his medics (R 443); that the accused performed his duties very correctly and never gave injections to



the witness was in subcamp Soblier no one died as a result of injections (R 445).

The accused testified that he was inducted into military service in 1940 (R 461) and in 1941 was wounded and sent to Mauthausen Concentration Camp for duty; that he served as a medic from January 1943 to January 1945 and then went back to the front (R 462). He denied that he ever received any order from Schoepperle to clear the dispensary (R 463), and denied that death injections were given by him (R 464). He never beat any inmate and never selected any inmates to be put to death (R 465, 466). He had nothing to do with killing 100 inmates (R 467). No complaint was ever made by Dr. Pottlacher about his conduct as a medic (R 467). He further testified that he made four applications to be transferred and the fourth was granted and he was sent to the front in January 1945 (R 469).

Sufficiency of Evidence: The Court might well have concluded from the evidence that the accused was personally responsible for the killing of many inmates. The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: A Petition for Review was filed by Captain Frank E. Morse, 18 September 1947. Petitions for Clemency were filed by Dr. Alfred Hoeglauer, 6 December 1947, 13 December 1947 and 10 January 1948.

Recommendation: That the findings and sentence be approved.

6. Emil GERBIG

This accused was acquitted (R 597).

7. Johann LOTHALLER

This accused was acquitted (R 597).

8. Stefan MALLECHITS

Nationality:	Austrian
Age:	34
Civilian Status:	Clerk
Party Status:	Unknown
Military Status:	Sergeant, Waffen SS
Flea:	NG



Findings: G

Sentence: 10 years, commencing 8 May 1945

Evidence for Prosecution: The accused was drafted into the Wehrmacht in May 1940 and after four weeks was ordered into the Waffen SS and was subsequently sent to Mauthausen where he served from August 1941 to shortly before the war's end in 1945 (R 525). Engel identified the accused, and testified that in April 1945 the accused was a guard on an inmate evacuation march from Mauthausen to Gunskirchen which took about five days: that whenever an inmate would get out of the line of march, the accused would shoot at him and that he saw him shoot a Czech inmate to death (R 102-105). The transport had about 10,000 in it and the accused was the leader (R 115).

In an extrajudicial sworn statement the accused stated that several times he escorted prisoners to Castle Hartheim. When these trips were made, he was clerk of the Prisoner's Compound Orderly room (R 219; P-Exs 9, 9A).

In an extrajudicial sworn statement Rosenbaum stated that the accused was one of the transport leaders from Mauthausen to Gunskirchen and that the accused shot prisoners who were weak and exhausted (R 229; P-Exs 17, 17A).

In an extrajudicial sworn statement Perl Moses stated that the accused was transport leader on the transport from Mauthausen to Gunskirchen in April 1945 and that he personally heard the accused give an order to an SS guard to shoot three inmates on the transport for taking potatoes from a wagon, and they were shot as ordered (R 230; P-Exs 18, 18A).

Evidence for Defense: Sanner, a former inmate, identified the accused and testified that he saw the accused once or twice weekly at Mauthausen and that accused was always polite and decent and treated inmates well (R 360, 361). Witness further testified that he knew of transports leaving Mauthausen and usually an officer was in charge and he never heard of a sergeant being in charge (R 362). Haider, identified the accused, whom he knew in Mauthausen (R 393), and testified that he saw the accused almost every day and never saw him beat or mistreat inmates (R 395-396). Witness remembered a large transport from Mauthausen to Gunskirchen in the spring of 1945 and SS First Lieutenant Altfeldisch was in charge, and the



accused in Mauthausen and identified him in Court (R 407) and testified that in April 1945 he made a trip with the accused to Austria; that the trip took two or three days (R 408); and that he never heard of the accused mistreating inmates in Mauthausen (R 409). Streitwolf, a former inmate of Mauthausen, identified the accused (R 411) and testified that the accused treated him and all other inmates well and that he never heard of the accused beating or kicking inmates (R 413). Bollhorst knew the accused at Mauthausen, and testified that the accused did not go on any of the transports to Gunskirchen in or about April 1945, and that every such transport was commanded by an SS officer (R 588).

The accused testified that he served as clerk in the guard company until the summer of 1943; that he had nothing to do with imposing punishment upon inmates; that he had nothing to do with determining policy in the camp (R 526); that he never did beat prisoners; that he was never on a transport and never did shoot an inmate while on a transport (R 527); that he never ordered that an inmate be shot, who was on a transport; that in April 1945 he was a clerk in the Protective Custody Camp orderly room; and that in March or April 1945 he was absent three days on a car trip to Austria (R 528). He further testified that he made trips to Castle Hartheim with inmates whom he collected at Mauthausen and delivered to the personnel at Castle Hartheim; that no inmate was mistreated on these trips; and that he had to sign a form that nothing would be said about these trips (R 530). He also testified that when he arrived at Mauthausen he had to sign a pledge of secrecy that he would not talk about what he saw or heard in the camp (R 530). He made two attempts to get transferred from Mauthausen (R 531).

Sufficiency of Evidence: Austria was a co-belligerent of Germany. The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: A Petition for Review was filed by Captain Frank E. Morse, 18 September 1947. No Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

V. QUESTIONS OF LAW:



the Court was without jurisdiction to try the accused for the reason that the charges alleged offenses which occurred outside of the American Zone, to wit, in the Russian Zone (R 2, 4). The motion was overruled (R 6). War criminals, brigands, and pirates are the common enemies of all mankind and all nations have an equal interest in their apprehension and punishment for their violations of international law. Concerning this question, it is stated in "Wheaton's International Law," Volume I, Sixth Edition, at page 269, that every independent state has the judicial power to punish "piracy and other offenses against the common law of nations, by whomsoever and wheresoever committed." Military Government Courts have jurisdiction over the nationals of any country who are in the United States Zone of Occupation except as to certain classes of American and other nationals, e.g., military personnel, which are not pertinent to the jurisdictional question here involved. Concerning jurisdiction over war crimes, no limitation is imposed. (See Sections 5-300.2 and 5-300.3 Title 5, "Legal and Penal Administration" of "Military Government Regulations," published by Office of Military Government for Germany (US), 27 March 1947). Concerning the general question of universality of jurisdiction over war crimes see "Universality of Jurisdiction Over War Crimes," by Cowles, California Law Review, Volume XXXIII, June 1945, No. 2, pp. 177-218.

It may be the defense intended to attack the jurisdiction of the Court on the ground that the accused could not be tried in the United States Zone of Occupation unless certain administrative steps were taken as provided by Section 4, Article III, Control Council Law No. 10, which provides:

" 4. Persons known to be wanted for trial in another Zone or outside Germany will not be tried prior to decision under Article IV unless the fact of their apprehension has been reported in accordance with Section I (b) of this Article, three months have elapsed thereafter, and no request for delivery of the type contemplated by Article IV has been received by the Zone Commander concerned."

The defense failed to establish a lack of adherence to the provisions in question. In any event, the provisions are merely administrative and not jurisdictional. Failure to strictly comply therewith would not have



affected the jurisdiction of the Court. Section 2 of the same article of that law provides:

" 2. The tribunal by which persons charged with offenses hereunder shall be tried and the rules and procedures thereof shall be determined or designated by each Zone Commander for his respective Zone. Nothing herein is intended to, or shall impair or limit the jurisdiction or power of any court or tribunal now or hereafter established in any Zone by the Commander thereof, or of the International Military Tribunal established by the London Agreement of 8 August 1945."

It is clear that the Court had jurisdiction of the persons of the accused and of the subject matter.

The defense objected to the jurisdiction of the Court to try the accused Olf BRANDT, alleging that he is an American citizen, having been born in Stanton, Virginia, and that he still claims his American citizenship, and moved that the case be dismissed as to such accused (R 592).

In USCA, Title 8, p. 797, we find:

"A person who is a national of the United States whether by birth or naturalization shall lose his nationality by: (a) Obtaining naturalization in a foreign state, either upon his own application or through the naturalization of the parent having legal custody of such person: Provided, however, that national should not be lost as the result of the naturalization of a parent unless and until the child shall have obtained the age of 23 years without acquiring permanent residence in the United States: \*\*\* (b) Taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state; or (c) Entering, or serving in, the armed forces of a foreign state unless authorized by the laws of the United States, if he has or acquires the nationality of such foreign state; or (d) Accepting, or performing the duties of, any office, post, or employment under the government of a foreign state or political subdivision thereof, for which only nationals of such state are eligible; or (e) Voting in a political election in a foreign state or participating in an election or plebiscite to determine the sovereignty over foreign territory; \* \* \*"

In the case of U.S. ex. re. Wrona v. Karnuth, 14 F sup. 770, the court holds: "Persons born in the United States who after becoming 21 years old and enlisted in the Polish Army and took oath of allegiance to Poland thereby becomes expatriated. In the case of U.S. ex. rel. Rojok v. Marshall, 34 Fed., 2nd. 291, the court holds: "An American born citizen



may expatriate himself by protracted absence coupled with acts indicative of intent to assume foreign citizenship."

In answer to the motion the prosecution introduced exhibits to show that said accused had not lived in the United States since he was two and one-half months of age; that he never formally claimed American citizenship after reaching his majority; that he served in the German army in both World wars; and that he voted in German elections (R 592, 594; P-Exs 28, 28A, 28B, 28C, 28D). In the case of *Miller v. Sinjen*, 289 Fed. 388, the court holds: "It was incumbent on plaintiff to prove that during his stay in Germany he had the intent of retaining his American citizenship, of returning to the United States, and of remaining there permanently".

From the acts of the accused in serving in World War I and World War II, joining the NSDAP and Waffen SS, coupled with the fact that he voted in Germany, and in view of a ruling by the American Vice Consul in Munich, Germany (R 594; P-Exs 28, 28B) that this accused was not an American citizen, the motion was properly overruled.

Application of Parent Case: The Court was required to take judicial cognizance of the decision rendered in the Parent Case, including the findings of the Court therein that the mass atrocity operation was criminal in nature and the participants therein, acting in pursuance of a common design, subjected persons to killings, beatings, tortures, etc., and was warranted in inferring that those shown to have participated knew of the criminal nature thereof (Letter, Headquarters, United States Forces, European Theater, File AG 000.5, JAG-AGO, subject: "Trial of War Crimes Cases", 14 October 1946, and the Parent Case). All of the convicted accused were shown to have participated in the mass atrocity and the Court was warranted by the evidence adduced, either in the Parent Case or in this subsequent proceedings, in concluding as to them that they not only participated to a substantial degree but that the nature and extent of their participation were such as to warrant the sentences imposed. The Court properly overruled the defense objection to the introduction into evidence of Prosecution's Exhibit P-Ex 2, being a copy of the charge and particulars and of the findings and sentences pronounced in the Parent Case (R 15-17).



VI. CONCLUSIONS:

1. It is recommended that the findings and sentences as to all the convicted accused herein be approved.

2. Legal Forms Nos. 13 and 16 to accomplish this result are attached hereto, should it meet with approval.

HARRY D. PITCHFORD  
Attorney  
Post Trial Branch

Having examined the record of trial, I concur, this \_\_\_\_\_ day  
of \_\_\_\_\_ 1948.

C. E. STRAIGHT  
Lieutenant Colonel, JAGD  
Deputy Judge Advocate  
for War Crimes